

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FILED/ACCEPTED

MAR 26 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Implementation of Section 6112 of the Food,)	GN Dkt. No. 09-29
Conservation and Energy Act of 2008)	
)	
)	DA No. 09-561

**COMMENTS OF THE
 OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION**

The Office of Advocacy of the U. S. Small Business Administration ("Advocacy") submits these comments to the Federal Communications Commission ("FCC" or "Commission") in the above-referenced docket.¹ Advocacy believes that the FCC must focus on two goals in its rural broadband strategy: harmonizing the rural plan with a larger national broadband strategy and fostering competition in the market for advanced telecommunications services in rural areas. These two components will work as complements to expand broadband availability and adoption in all unserved and underserved areas of the United States, including rural portions of the nation.

Introduction and Summary

The Commission has invited interested parties to comment on Congress' directive in the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) directing the FCC, in consultation with the Secretary of the Department of Agriculture, to develop a comprehensive rural broadband strategy.² The Commission has also been mandated by Congress to create a national

¹ See *In the Matter of a Comprehensive Rural Broadband Strategy*, GN Docket No. 09-29, DA Docket No. 09-561 (rel. March 10, 2009)[hereinafter, Notice].

² Pub. L. 110-226, 122 Stat. 1651 (June 18, 2008).

broadband strategy.³ Because access to affordable broadband is a national goal, it is important that the FCC's rural strategy be in harmony with the Commission's national plan to create ubiquitous broadband availability and adoption in the United States. Broadband is an area in which small telecommunications firms can help to build other small businesses. The recent loan programs enacted under the American Recovery and Reinvestment Act of 2009 ("ARRA" or "Recovery Act") will enable small service providers to build networks at competitive prices and offer quality service to small firms and residents of rural and other underserved areas.

Small telecommunications companies play a key role in enhancing competition in the market for broadband services.⁴ The ARRA's loan and grant programs will lower the initial costs of expanding the nation's broadband infrastructure. However, despite the Recovery Act's funding, network access regulations, the FCC's special access pricing flexibility rules, and other regulatory barriers will still remain.⁵ It is critical that the Commission develop a rural broadband strategy that will lower these barriers to entry in the market for broadband service so that rural small businesses will receive quality service at reasonable prices.⁶ The FCC must harmonize its regulatory policies so that these new initiatives can properly be fulfilled.⁷

Competitive broadband offerings will assist in ensuring that the most advanced

³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act).

⁴ See, Carol Wilson, *Broadband Front Lines: Broadband Wars Taking Toll on Smaller Competitors* (March 28, 2005) Telephony Online, available at: http://telephonyonline.com/broadband/finance/wts_transcom_verizon_032805/ (explaining that "a competitive broadband communications market allows small companies to carve out a niche, providing services that larger companies don't").

⁵ See, Comments of the Office of Advocacy, In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 (August 8, 2007).

⁶ Id.

⁷ See, Testimony of FCC Commissioner Michael J. Copps, U.S. Senate Committee on Small Business and Entrepreneurship: *Improving internet Access to Help Small Business Compete in a Global Economy* (September 26, 2007) (stating that "We need to make sure that all branches of the government are cooperating to encourage broadband deployment...The GAO's examination of the special access market reveals that around 94% of commercial buildings are served exclusively by the incumbent telephone company. The same report also demonstrates that the FCC's deregulatory policies, and its approval of merger after merger, have saddled small and medium-sized businesses with increased special access prices").

technologies are brought to market at the lowest prices. From a consumer standpoint, small business customers need affordable access to the fastest and most dynamic technologies. “Connected” businesses have the potential to expand their markets beyond traditional geographic boundaries, and they should have access to a variety of different technologies to meet their growing needs.⁸ Advocacy urges the FCC to address the need for competition in the market for broadband service through a rural broadband strategy properly harmonized with a larger, national broadband strategy, because of the important role that small businesses play in the provision of telecommunications services in all sectors of the U.S. economy.

1. Advocacy Background.

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (“SBA”), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Part of our role under the Regulatory Flexibility Act (“RFA”) is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voice of small businesses is not lost within the regulatory process.⁹ Congress crafted the RFA to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.¹⁰ In addition, the RFA’s purpose is to address the adverse affect that “differences in the scale and resources of regulated entities” has had on competition in the marketplace.¹¹

Executive Order 13272 further gives small business owners a voice in the complex and

⁸ Stephen B. Pociask for Office of Advocacy, *Broadband Use by Rural Small Businesses* (December 2005) [hereinafter Pociask].

⁹ Pub. No. 96-354, 94 Stat. 1164 (1980).

¹⁰ Pub. L. 96-354, Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).

¹¹ Pub. L. 96-354, Findings and Purposes, Sec. 4, 126 Cong. Rec. S299 (1980).

confusing federal regulatory process by directing the Office of Advocacy to work closely with the agencies to ensure that the agencies can properly consider the impact of their regulations on small entities.

2. History

Section 706 of the Telecommunications Act of 1996 (“Telecom Act” or “The Act”),¹² directs the FCC to foster the deployment of advanced telecommunications services to all Americans in a reasonable and timely fashion.¹³ Section 706 also requires the Commission to assess the level at which these advanced services are available and to accelerate deployment through the removal of barriers to infrastructure investment.¹⁴ Congress understood the importance of what has been termed “broadband” service for both residential and business customers and tasked the FCC, the expert agency on telecommunications matters, with making sure that all Americans have access to broadband Internet services.

During the early 1990s, American households accessed the Internet through a dial-up connection with an Internet service provider (“ISP”) such as American Online (AOL) over the copper telephone lines that provide traditional telephony services. Faster connections were accessed by a small number of businesses through “dedicated lines” provided by local telephone companies.¹⁵ Beginning in the late 1990s, cable companies began offering advanced telecommunications services through cable modems, while incumbent local exchange carriers (ILECs) offered their customers digital subscriber line (“DSL”) service (or broadband over copper).¹⁶ As the larger ILECs made plans to bring fiber-based technologies to the marketplace,

¹² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹³ *Id.*.

¹⁴ *Id.*

¹⁵ Congressional Research Service, *The Evolving Broadband Infrastructure: Expansion, Applications, and Regulation*, 1 (February 19, 2009).

¹⁶ *Id.*

they also pushed for a relaxed regulatory environment to mitigate the expense involved in building a new network.¹⁷ For example, in 2004, Verizon Communications petitioned the FCC to grant it regulatory forbearance, and because the Commission failed to vote on this important request, it was approved via “operation of law.”¹⁸ FCC Chairman Kevin J. Martin agreed that the deregulation would expand broadband deployment across the country.¹⁹ To date, the promise that advanced telecommunications services would be extended throughout America has not been fulfilled by the large ILECs. This failure to deploy advanced technology fully has moved Congress to introduce additional legislation, so that unserved and underserved areas of this nation will have access to what has been dubbed a “lifeline communication.”²⁰

In 2008, Congress passed the 2008 Farm Bill, which further supports the Telecom Act’s directive of expanding broadband service throughout rural areas through the creation of loans to fund broadband service projects.²¹ The Act also directs the FCC to create a rural broadband strategy.²² Since the passage of the Farm Bill, Congress has also enacted the American

¹⁷ See, Ben Charney, *Verizon Details Fiber Plans*, CNET News (November 2003), available at: http://news.cnet.com/Verizon-details-fiber-plans/2100-1034_3-5108125.html. See also, The Associated Press, *Regulation Eased on Verizon Pricing*, The New York Times (March 21, 2006), available at: <http://www.nytimes.com/2006/03/21/politics/21phone.html> (explaining that the federal government is “easing regulations on what Verizon Communications can charge business customers for its high speed data services...[and] allowing Verizon to exempt broadband data services provided to large enterprise and wholesale customers, including wireless and long distance phone companies, from rules regarding tariff filings and price requirements.”).

¹⁸ See, Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules With Respect to Their Broadband Services, WC Docket No. 04-440 (December 20, 2004).

¹⁹ Kelley M. Teal, *Martin Defends Decision Not to Act on Verizon Petition* (March 21, 2006), PHONE+ available at: <http://www.phoneplusmag.com/hotnews/63h2021553618334.html> (stating that “Martin said he wants to promote U.S. broadband deployment and achieve a level playing field among communications operators). See also, Comments of the Office of Advocacy, In the Matter of: Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) From Title II and Computer Inquiry Rules With Respect to Their Broadband Services, WC Docket No. 04-440 (explaining how the petition also lacked the analysis required by Section 10 of the Communications Act of 1934, and as such the record failed to consider how this petition would or would not impact small businesses, a significant portion of the public interest).

²⁰ See, John Eggerton, *Hill Ponders Adding Broadband to USF: Dems Want to Extend Funds to Underwriting Broadband Buildout* (March 12, 2009), Broadcasting & Cable, available at: http://www.broadcastingcable.com/article/189856-Hill_Ponders_Adding_Broadband_To_USF.php (explaining how the panelists at a recent broadband hearing all referred to broadband as a lifeline technology).

²¹ Pub. L. 110-226, 122 Stat. 1651 (June 18, 2008).

²² *Id.*

Recovery and Reinvestment Act of 2009, which establishes funding for broadband grants through both the Rural Utilities Service (“RUS”) and the National Telecommunications and Information Administration (“NTIA”).²³

3. The Rural Strategy Should be Aligned With a National Broadband Plan

While extending broadband service to rural areas will involve specific challenges, such as geographical considerations, it is important that this broadband plan be implemented on a national level. A rural plan should flow from a larger national plan coordinating all relevant federal government agencies and maintaining a consistent and transparent approach. This national plan should establish a broadband map, create uniform definitions to be used by all relevant government agencies, set a minimum speed to constitute adequate service, and provide information on how rural small businesses can reap the most benefit from broadband Internet service.

First, the report required by Section 6112²⁴ of the Farm Bill on rural broadband service should examine all “unserved” and “underserved” areas of the United States, and the FCC should complete an accurate map to highlight available services, pricing, and adoption as soon as possible.²⁵ The mapping project should also provide information to the greatest extent possible on residential business customers and home based businesses, because the broadband needs of these demographics may not be the same. For example, certain small businesses with operations that rely heavily on content may need greater bandwidth, while purely residential users may not share the same immediate need.

²³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act).

²⁴ Pub. L. 110-226, 122 Stat. 1651, § 6112 (June 18, 2008).

²⁵ Advocacy believes that this map is a critical first step in understanding what type of broadband service exists across the U.S. and at what cost. Having this map completed before the broadband funds are allocated and before the Commission finalizes its national broadband strategy will best support the federal government’s goals vis á vis small business.

Next, this report should establish uniform definitions of the terms: broadband, rural, urban, unserved, underserved, small business and disadvantaged business for the purpose of broadband. Maintaining uniform definitions for rules at the FCC, National Telecommunications and Information Administration (“NTIA”), and Rural Utilities Service (“RUS”) will ensure that our national strategy remains consistent. Clear definitions will enable participants in the grant programs to navigate their way through a potentially burdensome application process more easily.

The report should also establish a minimum level of appropriate service for residential and business customers in areas designated as unserved or underserved. While the Farm Bill is separate from the ARRA, it is important that these legislative initiatives are harmonized through the overarching rural and national strategies. The Commission can and should analyze industry’s comments as to the types of speeds and technological offerings of competitive cable and telecommunications companies, to ensure that rural areas have a variety of services and price plans to choose from.

A rural broadband report should also focus on how certain broadband services, such as distance learning and telemedicine, can best benefit rural small business populations. It goes without saying that rural small entities will benefit from being able to reach a broader customer base and expand marketing efforts over the Internet. However, there are other important programs that will enrich rural communities. Today, for example, online classrooms are enrolling diverse student bodies both nationally and internationally, and would permit rural executives to access these educational programs.²⁶ Telemedicine can also facilitate medical access to specialists located far away from rural areas and perhaps encourage small business employers to remain in rural areas rather than to move their business to more urban areas. As

²⁶ See Pociask, *supra* note 8 at 2.

such, the report should explore how to optimize the many programs that will expand broadband service to small business and residential customers.

4. Rural Small Businesses Need Competition in the Market for Broadband

A rural broadband strategy should encourage new entrants to enter the market for broadband services, raise competition and make service affordable once it is available. Past studies have shown that competition between broadband platform providers will spur the development of advanced technologies and services in the marketplace.²⁷ A diverse array of technologies will lead to ubiquitous coverage and the market will give rise to affordable pricing due to a higher level of competition.²⁸ Making a variety of broadband service options available to rural communities is critical to ensuring that both residential and business customer needs are adequately fulfilled.

Studies have also shown that consumers who live in “low-density” markets have fewer choices among broadband providers.²⁹ The geographic barriers of rural communities have made service to certain areas difficult in the past, and this has discouraged the larger incumbent firms from investing in rural broadband.³⁰ Instead, firms like Verizon have invested in various foreign

²⁷ *FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-80 (November 2006) [hereinafter GAO Study]. It is important to note that this study was completed before the finalization of the latest AT&T-BellSouth merger. However, it clearly establishes the lack of viable alternatives in the provision of special access.

²⁸ *Id.*

²⁹ Pociask, *supra* note 8 at 12. *See also, IBM and IBEC Initiate Broadband Access to 200,000 Rural Americans*, (February 18, 2009) MSN MONEY, available at: <http://news.moneycentral.msn.com/ticker/article.aspx?symbol=US:IBM&feed=MW&date=20090218&id=9619829> (explaining that “While DSL and Cable modem service providers are competing head-to-head in many urban areas, neither is feasible in low density, underserved areas (both rural and urban), where DSL requires significant telephone network upgrades, and cable data is not economically viable...The only broadband choice for many consumers in rural areas is satellite data service, which does not offer comparable data rates and is more costly than wire line services.”).

³⁰ *See, Geography Hinders Rural Broadband Deployment*, available at: http://findarticles.com/p/articles/mi_m0BMD/is_204_7/ai_79582665 (summarizing a NECA study that explains how high-speed internet service is “uneconomic” in many rural telephone company areas). *See, e.g., KKCC Northern Fiber Optic Link, Primary Socioeconomic Benefits*, available at: <http://www.northernfiberlink.info/pages/benefits/benefitslinked.html> (last visited March 25, 2009)(explaining how this small company would provide high-speed broadband service to unserved areas of the United States).

projects, such as a recent undersea cable project that will connect Europe, the Middle East, and India.³¹ AT&T will reportedly spend 1 billion dollars in 2009 to expand its global network and provide new services to businesses.³² Rural America needs new services for its own businesses. A rural strategy should encourage small competitors in the provision of broadband Internet service to incur the risks involved with building their networks, so that remote areas have the same choices as their foreign counterparts.

5. Conclusion.

To ensure that that Congress' goals in promoting competition via the Telecom Act and the 2008 Farm Bill are fully realized, Advocacy urges the FCC to focus on harmonizing the rural broadband strategy with the national strategy, and to foster competition in the market for advanced telecommunications services in rural areas. The Office of Advocacy is available to assist the Commission in its outreach to small business or in its consideration of the impact upon them. For additional information or assistance, please contact me or Cheryl Johns of my staff at (202) 205-6949 or cheryl.johns@sba.gov.

³¹ Reuters, Verizon Invests in Undersea Cable, My Digital Life (May 7, 2008), available at: http://www.mydigitallife.co.za/index.php?option=com_content&task=view&id=1036899&Itemid=36 (explaining that Verizon Business has begun work on the Europe India Gateway, due in 2010 and costing more than \$700 million dollars).

³² UK Trade and Investment, *AT&T Invests to Expand Global Network: U.S. Telecoms Giant Has Said it is to Invest Millions in its London Internet Data Centre* (March 25, 2009), available at: <http://www.ukinvest.gov.uk/OurWorld/4042578/en-GB.html>

Respectfully submitted,

/s/ _____
Shawne Carter McGibbon
Acting Chief Counsel for Advocacy

/s/ _____
Cheryl M. Johns
Assistant Chief Counsel for Telecommunications

Office of Advocacy
U.S. Small Business Administration
409 3rd Street, S.W.
Suite 7800
Washington, DC 20416

March 25, 2009

cc:
Acting Chairman Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Robert M. McDowell
Kevin Neyland, Acting Administrator, Office of Information and Regulatory Affairs

via electronic filing

Certificate of Service

I, Cheryl M. Johns, an attorney with the Office of Advocacy, U.S. Small Business Administration, certify that I have, on this March 25, 2009, caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

/s/ _____
Cheryl M. Johns

Honorable Michael J. Copps
Acting Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B115
Washington, DC 20554

Qualex International Portals II
445 12th Street, S.W.
Room CY-B402
Washington, DC 20554

Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-A302
Washington, DC 20554

Kevin Neyland,
Acting Administrator
Office of Information and Regulatory
Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

Honorable Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-C302
Washington, DC 20554